FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, DC 20463

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

RAD REFERRAL:	RR 05L-25
DATE OF REFERRAL:	May 26, 2005
DATE ACTIVATED:	Feb. 15, 2006
EXPIRATION OF SOL:	March 12, 2009
RAD REFERRAL:	RR 06L-08
DATE OF REFERRAL:	March 7, 2006
DATES ACTIVATED:	March 8, 2006
EXPIRATION OF SOL:	May 20, 2008- Sept. 28. 2010

SOURCE: Internally Generated

RESPONDENTS: Daniel W. Hynes
Hynes for Senate. and
Jeffrey C. Wagner, in his official capacity as treasurer

RELEVANT STATUTES: 2 U.S.C. § 434(b)(8)
2 U.S.C. § 441a(1)(2)(B)
11 C.F.R. § 103.3(b)(2)
11 C.F.R. §104.3(a)
11 C.F.R. § 400.32

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

These referrals from the Reports Analysis Division ("RAD") concern potential violations of the Federal Election Campaign Act of 1971. as amended (the "Act") by Hynes for Senate and Jeffrey C Wagner. in his official capacity as treasurer (collectively the "Committee") and Daniel

W. Hynes, a candidate for the U.S. Senate for Illinois in the 2004 election. Specifically, RR 05L-25 sets forth potential violations of 2 U.S.C. § 434(b) stemming from the Committee's failure to report certain debts and obligations on its April 2004 Quarterly Report. RR 06L-08 involves potential violations relating to the so-called "Millionaire's Amendment" of the Bipartisan Campaign Reform Act, which in relevant part prohibits candidates and committees that receive contributions under increased limits in accordance with the "Millionaire's Amendment" from continuing to do so after the self-financed candidate ceases to be a candidate. 2 U.S.C. § 441a(i)(2)(B).

Based on a review of the relevant disclosure reports and available information, we recommend that the Commission find reason to believe that the Committee violated 2 U.S.C. §§ 434(b) and 441a(i)(2)(B) by failing to report debts and obligations on its original April 2004 Quarterly Report and by receiving contributions under increased limits in accordance with the "Millionaire's Amendment" after the self-financed candidate ceased to be a candidate. Because the Millionaire's Amendment creates specific obligations for candidates, we recommend that the Commission also find reason to believe that Daniel W. Hynes violated the Act by accepting contributions under increased limits after the self-financed candidate was no longer a candidate.

Finally, as discussed *infra*, as part of the resolution of MUR 5405 (Apex Healthcare, Inc.), the Commission notified the Committee on February 8, 2005, that it was required to disgorge $71,000 in contributions made in the names of others. To date, the Committee has not disgorged the funds. We therefore recommend that the Commission, pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities, find reason to

believe that the Committee violated 11 C.F.R. § 103.3(b)(2) by failing to disgorge improper campaign contributions within 30 days of the Commission's notice.

II. REPORTING VIOLATIONS

The Committee amended its April 2004 Quarterly Report, which reveals that it failed to disclose $409,998.05 in debts and obligations.[1] The Act requires that political committees disclose debts and obligations in accordance with 2 U.S.C. § 434(b), including the total amount and nature of outstanding debts and obligations owed by or to the committee. *See* 2 U.S.C. § 434(b)(8). To date, the Committee's sole explanation for these reporting failures has been that the original quarterly report reporting no debts or obligations was "erroneous" and an "oversight." *See* Letter from M. Forde to K. Scindian dated March 30, 2005, at 5. We therefore recommend that the Commission find reason to believe that Hynes for Senate and Jeffrey C. Wagner, in his official capacity as treasurer, violated 2 U.S.C. § 434(b).

III. MILLIONAIRE'S AMENDMENT VIOLATIONS

A. Factual Summary

Mr. Hynes ran in the Democratic primary for the U.S. Senate from Illinois against Blair Hull, a multi-millionaire who spent $29 million of his own money on his campaign. Based on Hull's campaign expenditures, the contribution limit for individuals increased to $12,000 for the primary election under the "Millionaire's Amendment." *See* 2 U.S.C. § 441a(i)(1)(C)(iii). Both Mr. Hynes and Mr. Hull lost in the March 16, 2004, primary election, thus ending their candidacies.

[1] The Committee reported no debts or obligations on its original April 2004 Quarterly Report On November 30, 2004, the Committee contacted RAD seeking advice on how to account for previously unreported loans and debts. RAD instructed the Committee to file an amended report, which it did on December 2, 2004.

When the primary campaign ended, the Committee had debts and obligations of approximately $400,000. *See* Ltr. from M. Forde to A. Schwartz dated Nov. 4, 2005, at 3. In order to pay the debts and obligations, the Committee continued its fundraising efforts. These efforts included soliciting contributions from individuals under the increased individual contribution limit in place when Mr. Hull was a candidate. As a result of these efforts, the Committee raised $110,320.20.

On November 2, 2004, RAD sent the Committee the first of many Requests For Additional Information ("RFAIs") requesting an explanation for accepting contributions that appeared to exceed the limits set forth in the Act. *See, e.g.,* RFAI dated Nov. 2, 2004. The RFAIs cited contributions from individuals made after the March 16, 2004, primary that exceeded the then-applicable $2,000 individual contribution limit. The Committee responded by claiming that it "was permitted to continue to raise funds under the Millionaire's Amendment subsequent to the primary date to retire debts incurred with that election." Ltr. from M. Forde to K. Scindian dated Dec. 1, 2004, at 1. Thereafter, the Committee continued to accept contributions in excess of $2,000 despite receiving additional RFAIs identifying the contributions as excessive.

B. Legal Analysis

Under the Millionaire's Amendment, once a self-financed candidate ceases to be a candidate, his or her opponents and their authorized committees shall not accept any contribution under the increased limit after the date on which the self-financed candidate ceases to be a candidate to the extent that the amount of such increased limit is attributable to the self-financed candidate. 2 U.S.C. § 441a(i)(2)(B). In this matter, respondents may have violated 2 U.S.C.

§ 441a(i)(2)(B) by accepting $110,320.20 in increased contributions pursuant to the Millionaire's Amendment after Mr. Hull, the self-financed candidate, lost in the primary election.

Respondents' contention that they may continue to accept contributions under the increased contribution limits in order to pay debts incurred while the self-financed candidate was still a candidate is not supported by law. In addition to the statutory language, the Commission's regulations prohibit both a candidate and his or her authorized committee from accepting contributions under the increased limits "to the extent that such increased limit is attributable to the opposing candidate who has ceased to be a candidate." 11 C.F.R. § 400.32(b). In fact, the Explanation and Justification for the regulation sought comment on the exact issue raised here, asking "should the authorized committee be able to continue to raise funds under the increased limits to pay off the outstanding debts?" E&J for Millionaire's Amendment, 68 Fed. Reg. 3970, 3984 (Jan. 27, 2003). To date, no comments have been received nor has the rule been altered to allow candidates to raise increased contributions to pay off debts incurred while running against a self-financed candidate.

We therefore recommend the Commission find reason to believe that Hynes for Senate and Jeffrey C. Wagner, in his official capacity as treasurer, violated 2 U.S.C. § 441a(i)(2)(B). Since the Act prohibits both the candidate and the candidate's committee from accepting increased contributions after the date on which a self-financed candidate ceases to be a candidate, we also recommend that the Commission find reason to believe that Daniel W. Hynes violated 2 U.S.C. § 441a(i)(2)(B).[2]

[2] We do not, however, believe that a knowing and willful finding is warranted at this time Although the Committee received multiple RFAIs from RAD regarding these violations, they were never informed that the legal basis for their actions, as set forth in their letter to RAD dated December 1, 2004, was not justified, and we have no other

IV. FAILURE TO DISGORGE IMPROPER CONTRIBUTIONS

On February 8. 2005. the Commission notified the Committee that it had received $71.000 in contributions made in the names of others and instructed the Committee to disgorge the funds to the U.S. Treasury within 30 days. *See* MUR 5405 (Apex Healthcare, Inc.). In the summer of 2005, this Office contacted counsel for the Committee to inquire about the status of the disgorgement. Counsel advised that the Committee had substantial debts, including a candidate loan of $177.000, but that it was conducting additional fundraising efforts. On November 4, 2005, counsel for the Committee wrote a letter to this Office proposing that the candidate forego repayment of the candidate loan. repay $70,544 in debts to vendors, and disgorge any remaining cash to the U.S. Treasury. The Committee stated it would not make any disbursements until it received instructions from the Commission.[3] On November 23, 2005, this Office informed the Committee that, pursuant to 11 C.F.R. § 103.3(b)(2), when the treasurer of a political committee deposits a contribution and later discovers that it came from a prohibited source based on new evidence not available to the political committee at the time of receipt and deposit. the treasurer shall refund the contribution within thirty days of the date on which the illegality was discovered. *See* Ltr. from A. Schwartz to M. Forde dated Nov. 23. 2005, at 1. The letter also explained that the $71,000 disgorgement took precedence over all other outstanding

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information suggesting that the Committee knew that it was violating the law at the time it accepted the contributions

debts and obligations.[4] *See id.* Given the Committee's failure to disgorge after receiving notice of the illegality of the contributions, we recommend the Commission find reason to believe that Hynes for Senate and Jeffrey C. Wagner, in his official capacity as treasurer, violated 11 C.F.R. § 103.3(b)(2) by failing to disgorge improper campaign contributions in a timely fashion.[5]

V. DISCUSSION OF CONCILIATION AND CIVIL PENALTY

[4]

VI. RECOMMENDATIONS

1. Open a MUR.

2 Find reason to believe that the Hynes for Senate and Jeffrey C. Wagner, in his official capacity as treasurer, violated 2 U.S.C §§ 434(b) and 441a(1)(2)(B) and 11 C.F.R § 103.3(b)(2).

3 Find reason to believe that Daniel W. Hynes violated 2 U.S.C. § 441a(1)(2)(B).

4.

5. Approve the attached Factual and Legal Analyses: and

6 Approve the appropriate letters.

Lawrence H. Norton
General Counsel

Rhonda J. Vosdingh
Associate General Counsel
for Enforcement

5/1/06
Date

BY:

Ann Marie Terzaken
Assistant General Counsel

Adam J. Schwartz
Attorney

Attachments:

1. Factual and Legal Analysis for Daniel W. Hynes
2. Factual and Legal Analysis for Hynes for Senate and Jeffrey C. Wagner. in his official capacity as treasurer
3.